



TENNESSEE VALLEY AUTHORITY

BILLING CODE: 8120-08-P

18 CFR Part 1301

RIN 3316-AA23

Promoting the Rule of Law Through Improved Agency Guidance Documents

AGENCY: Tennessee Valley Authority

ACTION: Direct Final Rule

SUMMARY: The Tennessee Valley Authority (TVA) issues this final rule to implement procedures for the issuance of TVA guidance documents in accordance with Executive Order 13891. This final rule would, among other things, establish internal agency requirements for guidance documents, as well as public engagement procedures surrounding guidance documents.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The comment period will conclude on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Subject to review of the public comments received, TVA may delay the final effective date and, if so, will publish a document in the Federal Register to that effect.

FOR FURTHER INFORMATION CONTACT: Robin M. Daugherty, 423-751-3207, Email: rmdaugherty@tva.gov, Mail address: Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6 Knoxville, TN 37902.

SUPPLEMENTARY INFORMATION: TVA issues this final rule to incorporate into the Code of Federal Regulations a new 18 CFR 130.70 Subpart F, which would implement the requirements of Executive Order 13891, “Promoting the Rule of Law

Through Improved Agency Guidance Documents.’’ 84 FR 55235 (October 9, 2019) (EO 13891). EO 13891 requires agencies to provide more transparency around the issuance and use of guidance documents, including by promulgating procedures to increase public involvement in the TVA guidance document process. As noted in EO 13891, the Administrative Procedure Act (APA) generally requires agencies to provide public notice of proposed regulations, allow interested parties an opportunity to comment, consider and respond to significant comments, and publish final regulations in the Federal Register (See 5 U.S.C. 553). Such regulations, also known as legislative rules, have the force and effect of law and are legally binding upon the public. In addition to legislative rules, agencies may clarify existing obligations of regulated entities through nonbinding guidance documents, which the APA exempts from notice-and-comment requirements. (5 U.S.C. 553(b)(A)). EO 13891 defines ‘‘guidance document’’ as ‘‘an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation,’’ with a few noted exceptions listed in EO 13891, the APA and associated regulation. Guidance documents do not have the force and effect of law, and are intended only to provide clarity to the public of existing statutory and regulatory obligations. However, as noted in EO 13891, some agency guidance documents may impose obligations beyond those required by statute or regulation, or carry a threat of enforcement if the guidance is not followed by regulated parties. Additionally, the public may not have sufficient notice of guidance documents, which are not always published in the Federal Register or distributed to all regulated parties. See 84 FR 55235. Accordingly, EO 13891 requires agencies to provide more transparency for

their guidance documents by creating a searchable online database for current guidance documents, by requiring agencies to establish procedures to allow the public to comment on significant guidance documents, and authorizing the public to petition the agency to withdraw or modify guidance documents. Moreover, EO 13891 requires agencies to clearly state in their guidance documents that such guidance Does not have the force and effect of law and is not legally binding, except as authorized by law or as incorporated into a contract. This final rule would implement the requirements of EO 13891. This final rule would apply to all TVA guidance documents, which TVA proposes to define in the same manner as that term is defined in EO 13891, the APA and associated regulations, and OMB memo M-20-02 Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, Dominic J. Mancini, OIRA Acting Director (Oct. 31, 2019). The final rule would also adopt the same definition of “significant guidance document” as that term is defined in EO 13891 Section 2. In accordance with EO 13891, TVA will require that all TVA guidance documents clearly state that they do not have the force and effect of law and are not legally binding on the public, and that they are only intended to provide clarity to the public regarding existing statutory and regulatory requirements. Moreover, TVA guidance documents will be required to be written clearly, and to refrain from using mandatory language, such as the terms “shall” or “must.” If a guidance document purports to describe, approve, or recommend specific conduct that is beyond what is required by existing statute, legislative or judicial rule, TVA’s final regulation would require that TVA’s guidance document will not be used as an independent basis for enforcement. TVA also proposes in this new rule to require that all TVA guidance

documents be reviewed and cleared by the Office of the General Counsel before public availability. Additionally, the final rule would require that significant guidance documents be approved by the TVA Board of Directors or by delegation to a TVA Executive. This will ensure that the requirements and intent of EO 13891 are met, and that guidance documents are issued in accordance with relevant laws and regulations. The final rule also provides procedures for the public to petition the agency to modify or withdraw guidance documents. With this final rule, TVA would effectuate the requirements of EO 13891 and ensure that TVA's process for the issuance of guidance documents is transparent and accessible to the public. The final rule also assures regulated parties that such guidance is not legally binding and does not affect the rights and obligations of regulated parties.

Legal Authority

This final rule is promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831 *et seq.*, and the Administrative Procedures Act, 5 U.S.C. §553 *et seq.*

Background

The Tennessee Valley Authority is a multi-purpose corporate agency of the United States that provides electricity for business customers and local power companies serving 10 million people in parts of seven southeastern states. TVA provides flood control, navigation and land management for the Tennessee River system and assists local power companies and state and local governments with economic development and job creation.

Public Participation

TVA will accept comments, data, and information regarding this final rule on or before the date provided in DATES. Interested parties may submit comments, data, and other

information using any of the methods described in the ADDRESSES section at the beginning of this document.

Submitting comments via [http:// www.regulations.gov](http://www.regulations.gov). The <http:// www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to TVA General Counsel staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, TVA will use this information to contact you. If TVA cannot read your comment due to technical difficulties and cannot contact you for clarification, TVA may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments. Do not submit to <http:// www.regulations.gov> information the disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through <http:// www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below. TVA processes submissions made through <http://www.regulations.gov> before posting. Normally, comments will be posted within a

few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that [http:// www.regulations.gov](http://www.regulations.gov) provides after you have successfully uploaded your comment. Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to [http:// www.regulations.gov](http://www.regulations.gov). If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments. Include contact information each time you submit comments, data, documents, and other information to TVA. If you submit via postal mail or hand delivery/ courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted. Comments, data, and other information submitted to TVA electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that they believe to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” that deletes the information believed to be confidential.

Submit these documents via email or on a CD, if feasible. TVA will make its own determination about the confidential status of the information and will treat it according to its determination. It is TVA’s policy that all comments, including any personal information provided in the comments, may be included in the public docket, without change and as received, except for information deemed to be exempt from public disclosure.

Regulatory Analysis

A. Review Under Executive Order 12866, “Regulatory Planning and Review”

TVA sought informal review and support from the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). TVA does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a proposed rule of agency procedure and practice. The proposed rule describes TVA’s internal procedures for the promulgation and processing of guidance documents, to ensure that guidance documents only clarify existing statutory and regulatory obligations and do not impose any new obligations. TVA proposes to adopt these internal procedures as part of its implementation of EO 13891, and does not anticipate incurring significant additional resource costs in doing so. Moreover, it is anticipated that the public will benefit from the

resulting increase in efficiency and transparency in the issuance of guidance documents, and more opportunities to comment on guidance documents.

B. Review Under Executive Order 13771

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” at 82 FR 9339 (January 30, 2017), states that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. EO 13771 states that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. More specifically, section 2 of EO 13771 requires, amongst other things, that the costs of any new regulation be offset by the elimination of existing costs associated with at least 2 prior regulations.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The final rule would codify internal agency procedures regarding TVA’s issuance of guidance documents. Additionally, as noted previously, guidance documents do not have the force and effect of law and are not legally binding on regulated entities. This rule would establish procedures to ensure that TVA guidance only clarifies existing statutory and regulatory obligations, rather than imposing any new obligations. TVA therefore does not

anticipate any significant economic impacts from this final rule. For these reasons, TVA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, TVA did not prepare an IRFA for this rulemaking.

D. Review Under the Paperwork Reduction Act of 1995

The final rule would impose no new information or record keeping requirements.

Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.).

E. Review Under the National Environmental Policy Act of 1969

TVA has determined that the final rule would be covered under the Categorical Exclusion found in TVA's National Environmental Policy Act regulations at paragraph 7 of appendix A to subpart C, 18 CFR part 1318. This Categorical Exclusion applies to actions that are administrative actions consisting solely of paperwork. The final rule would codify internal agency procedures for issuing guidance documents. The action would not have direct environmental impacts. Accordingly, TVA does not intend to prepare an environmental assessment or an environmental impact statement.

F. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. EO 13132 requires agencies to examine the constitutional and statutory authority supporting any action that would limit

the policymaking discretion of the States and carefully assess the necessity for such actions. The EO also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. TVA examined this final rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government.

G. Review Under Executive Order 13175 ‘‘Consultation and Coordination With Indian Tribal Governments’’

Executive Order 13175, ‘‘Consultation and Coordination with Indian Tribal Governments,’’ 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications; that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The final rule would not significantly or uniquely affect the communities of the Indian tribal governments, or impose substantial direct compliance costs on them, therefore the funding and consultation requirements of EO 13175 do not apply.

H. Review Under Executive Order 12988, ‘‘Civil Justice Reform’’

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ‘‘Civil Justice Reform,’’ 61 FR 4729

February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements:

- (1) Eliminate drafting errors and ambiguity;
- (2) Write regulations to minimize litigation; and
- (3) Provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction.

Section 3(b) of EO 12988 specifically requires Executive agencies to make every reasonable effort to ensure that the proposed regulation:

- (1) Clearly specifies its preemptive effect, if any;
- (2) Clearly specifies any effect on existing Federal law or regulation;
- (3) Provides a clear legal standard for affected conduct, while promoting simplification and burden reduction;
- (4) Specifies its retroactive effect, if any;
- (5) Adequately defines key terms; and
- (6) Addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

EO 12988 Section 3(c) requires Executive agencies to review regulations to determine whether the EO requirements are met, or the agency determines that it is unreasonable to meet one or more of them. TVA has completed the required review and determined that,

to the extent permitted by law, the final rule would meet the EO 12988 relevant standards.

I. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a) and (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed “significant intergovernmental mandate” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year by State, local, and tribal

governments, in the aggregate, or by the private sector, so UMRA requirements do not apply.

J. Review Under Executive Order 13211, ‘‘Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use’’

Executive Order 13211, ‘‘Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,’’ 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ‘‘significant energy action’’ is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that:

- (1) Is a significant regulatory action under EO 12866, or any successor order; and
- (2) Is likely to have a significant adverse effect on the supply, distribution, or use of energy, or
- (3) Is designated by the Administrator of OIRA as a significant energy action.

For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. The final rule would codify internal agency

procedures and does not meet any of the three criteria listed above. Accordingly, the requirements of EO 13211 do not apply.

Approval of the Agency Head

The Tennessee Valley Authority's Chief Executive Officer approved the publication of this final rule, via delegation to the General Counsel.

Signing Authority

This document of the Tennessee Valley Authority was approved on August 28, 2020, by Sherry A. Quirk, General Counsel, pursuant to delegated authority from the Chief Executive Officer. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned TVA Federal Register Liaison Officer has been authorized to sign and submit the document for publication, as

an official document of the Tennessee Valley Authority. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Signed in Knoxville, Tennessee, on August 28, 2020.

Dillis D. Freeman, Jr.

Federal Register Liaison Officer, Tennessee Valley Authority.

List of Subjects in 18 CFR Part 1301

Freedom of information, Privacy, Sunshine Act.

For the reasons stated previously, TVA is amending part 1301 of title 18 of the Code of Federal Regulations as set forth below:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 5 U.S.C. 552 and 552a; 16 U.S.C. 831-831dd.

2. Add subpart F, consisting of§ 1301.70 through 1301.80, to read as follows:

Subpart F—General

Sec.

1301.70 Purpose and scope.

1301.71 Guidance document definition.

1301.72 Review and clearance by TVA’s Office of the General Counsel.

1301.73 Public access to effective guidance documents.

1301.74 Good faith cost estimates.

1301.75 Designation procedures.

1301.76 Notice-and-comment procedures.

1301.77 Petitions.

1301.78 Rescinded guidance.

1301.79 Emergency situations, exigent circumstances, and legal requirement.

1301.80 No judicial review or enforceable rights.

Subpart F - General

§ 1301.70 Purpose and scope.

(a) This subpart governs all Tennessee Valley Authority (TVA) employees and contractors involved with all phases of developing, drafting and issuing TVA guidance documents.

(b) Subject to the qualifications and exemptions contained in this subpart, these procedures apply to all TVA guidance documents, as defined by the Administrative Procedures Act, Executive Order 13891 and the Office of Management and Budget memo M-20-02, *Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions*, Dominic J. Mancini, OIRA Acting Director (Oct. 31, 2019).

§ 1301.71 Guidance document definition.

(a)(1) For purposes of this subpart, the term “guidance document” includes any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within TVA’s jurisdiction that is intended to have general applicability and future effect on the public, but which is not intended to have the force or effect of law in its own right and is not otherwise required by statute to satisfy the rulemaking procedures specified in 5 U.S.C. 553 or 5 U.S.C. 556. See OMB Bulletin 07-02, “Agency Good Guidance Practices,” See Office of Management and Budget (OMB) Bulletin 07-02,

“Agency Good Guidance Practices,” (January 25, 2007) (“OMB Good Guidance Bulletin”).

(2) The term “guidance document” Does not include:

(i) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);

(ii) Rules of agency organization, procedure, or practice;

(iii) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

(iv) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;

(v) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions (e.g., case or investigatory letters responding to complaints, warning letters), notices regarding particular locations or facilities (e.g., guidance pertaining to the use, operation, or control of a government facility or property), and correspondence with individual persons or entities (e.g., congressional correspondence), except documents ostensibly directed to a particular party but designed to guide the conduct of the broader regulated public;

(vi) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(vii) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and

individual presentations, editorials, media interviews, press materials, or congressional testimony that do not set forth for the first time a new regulatory policy;

(viii) Guidance pertaining to military or foreign affairs functions;

(ix) Grant solicitations and awards;

(x) Contract solicitations and awards;

(xi) Purely internal agency policies or guidance directed solely to TVA employees or contractors or to other public entities or agencies that are not intended to have substantial future effect on the behavior of regulated parties; or

(xii) Documents associated with matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) The term “TVA” refers to the Tennessee Valley Authority, a corporate agency of the United States, subject to applicable federal and state statutes and regulations and charged with a diverse mission. Congress tasked TVA with, among other things, providing flood control, navigation, and land management for the Tennessee River system; management and stewardship for TVA lands and waterways; producing and distributing electricity; regulating local power companies; and assisting local power companies and state and local governments in the Tennessee Valley with economic development and job creation.

(c) The term “BU” refers to a Business Unit, the organizational structure into which the various responsibilities associated with TVA’s mission is divided.

(d) The term “OGC” refers to TVA’s Office of the General Counsel, a BU within TVA.

(e)(1) The term “significant guidance document” means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

(i) To lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

(iii) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) To raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866, as further amended.

(2) The term “significant guidance document” does not include the categories of documents excluded by section 2 of Executive Order 12866 or any other category of guidance documents exempted by the Office of Management and Budget. Even if not “significant,” a guidance document will be considered “otherwise of importance to the

TVA's interests" within the meaning of this paragraph, if it may reasonably be anticipated:

- (i) To relate to a major program, policy, or activity of TVA or a high profile issue pending for decision before TVA;
- (ii) To involve one of the CEO or Board of Directors' top policy priorities;
- (iii) To garner significant press or congressional attention; or
- (iv) To raise significant questions or concerns from constituencies of importance to the TVA, such as Committees of Congress, States or Indian tribes, the White House or other departments of the Executive Branch, courts, consumer or public interest groups, or leading representatives of industry.

§ 1301.72 - Review and clearance by TVA's Office of the General Counsel.

The Office of the General Counsel (OGC)'s review and clearance of all TVA guidance documents shall ensure that each guidance document proposed to be issued by TVA satisfies the following requirements:

- (a) The guidance document complies with all relevant statutes and regulations;
- (b) The guidance document identifies or includes:
 - (1) The term "guidance" or its functional equivalent in the title of the document;
 - (2) A unique identifier, including, at a minimum, the date of issuance and title of the document, if applicable;
 - (3) The activity or entities to which the guidance applies;
 - (4) Citations to applicable statutes and regulations;

(5) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and

(6) A short summary of the subject matter covered at the beginning of the guidance document.

(c) The guidance document generally avoids using mandatory language, such as “shall,” “must,” “required,” or “requirement,” unless the language of the document is describing an established statutory or regulatory requirement or is addressed to TVA staff, and will not foreclose consideration of positions advanced by affected private parties;

(d) The guidance document is written in plain and understandable English; and

(e) The guidance document includes a clear and prominent statement declaring that the contents of the document do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or TVA policies.

§ 1301.73 - Public access to effective guidance documents.

(a) TVA shall ensure that:

(1) All effective guidance documents are loaded onto TVA’s guidance portal Web site, available at <https://www.tva.com/about-tva/guidelines-and-reports/tva-guidance->

documents, in a single, searchable, indexed database, and available to the public in accordance with the Freedom of Information Act and associated regulations;

(2) All effective guidance documents are identified by a unique identifier which includes, at a minimum, the document's title and date of issuance or revision.

(b) The TVA guidance document website will identify a TVA BU to receive and address complaints from the public that TVA is not following the requirements of the Administrative Procedures Act or Executive Order 13891, or is improperly treating a guidance document as a binding requirement.

§ 1301.74 Good faith cost estimates.

Even though not legally binding, some TVA guidance documents could result in significant economic impact. For example, guidance documents could induce private parties to alter their conduct to conform to recommended standards or practices, thereby incurring costs beyond the costs of complying with existing statutes and regulations.

While it may be difficult to predict with precision the economic impact of guidance documents, the proposing TVA BU shall, to the extent practicable, make a good faith effort to estimate the likely economic cost impact of the guidance document to determine whether the document might meet the definition of a significant guidance document.

When the proposing TVA BU is assessing or explaining whether it believes a guidance document is a significant guidance document, it shall comply with the analytic

requirements that would otherwise be required for a major determination under the Congressional Review Act.

§ 1301.75 Designation procedures.

(a) TVA may prepare a designation request to OMB's OIRA for certain guidance documents. Designation requests must include at least the following information:

(1) A summary of the guidance document; and

(2) The TVA recommended designation of "not significant" or "significant," as well as a justification for that designation.

(b) Except as otherwise provided in paragraph (c) of this section, TVA may seek significance determinations from OIRA for guidance documents, as appropriate, in the same manner as for rulemakings. Prior to publishing these guidance documents, and with sufficient time to allow OIRA to review the document in the event that a significance determination is made, TVA will generally provide OIRA with an opportunity to review the designation request or the guidance document, if requested, to determine if it meets the definition of "significant" or "economically significant" under Executive Order 13891.

(c) Guidance documents that do not otherwise present novel issues, significant risks, interagency considerations, unusual circumstances, or other unique issues that could reasonably be considered as significant or economically significant, within the meanings of Executive Order 13891, will not typically require a designation by OIRA.

§ 1301.76 Notice-and-comment procedures.

(a) Except as provided in paragraph (b) of this section, all proposed TVA guidance documents determined to be a "significant guidance document" shall be subject

to the following informal notice-and-comment procedures. TVA shall publish a document in the Federal Register announcing that a draft of the proposed significant guidance document is publicly available, shall post the draft significant guidance document on the TVA guidance portal site, shall invite public comment on the draft document for at least 30 days, and shall prepare and post a public response to significant concerns raised in the comments, as appropriate, on the TVA guidance portal site, either before or when the guidance document is finalized and issued.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document or categories of significant guidance documents for which OGC finds, in consultation with OIRA, and the vice president of the proposing TVA BU, good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons therefor in the guidance issued).

(c) Where appropriate, OGC and the vice president of the proposing TVA BU may recommend to the TVA Chief Executive Officer (CEO) that a particular guidance document that is otherwise of importance to TVA's interests shall also be subject to the informal notice-and-comment procedures described in paragraph (a) of this section.

§ 1301.77 Petitions.

Any person may petition the TVA Board of Directors to withdraw or modify a particular guidance document by submitting a written petition, addressed to the TVA Board of Directors, to OGC. TVA will endeavor to respond to all requests in a timely manner, and no later than 90 days after receipt of the request.

§ 1301.78 Rescinded guidance.

No TVA BU may cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

§ 1301.79 Emergency situations, exigent circumstances, and legal requirement.

In emergency situations or exigent circumstances, or when TVA is required by statutory deadline or court order to act more quickly than normal review procedures allow, TVA shall notify OIRA of the circumstances that foreclose compliance with these procedures, and shall comply with the requirements of this subpart, to the extent practicable, at the earliest opportunity after the exigent circumstances have ceased. Wherever practicable, TVA should schedule its guidance document review proceedings to permit sufficient time to comply with the procedures set forth in this subpart, given the nature and extent of the exigent circumstances.

§ 1301.80 No judicial review or enforceable rights.

The regulations in this subpart are intended to improve TVA's issuance of guidance documents and processes and procedures that govern TVA's guidance documents. As such, this subpart is for the use of TVA personnel and contractors only, and is not intended to, and Does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, TVA, its agencies, agents, contractors, or other entities, officers, employees, or any other person.